

03-24901

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Chapter 13 Case:
Case Number BKY 03-44606-RJK

Mark Paulson,

Debtor(s)

NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Deutsche Bank Trust Company Americas as Custodian moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 2:00 p.m., on October 14, 2004, in Courtroom No. 8 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered no later than October 8, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than October 4, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on June 25, 2003. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On December 21, 2001, Mark A. Paulson made, executed and delivered to Town and Country Credit his Note (hereinafter referred to as the "Note"), in the original principal amount of \$84,000.00 bearing interest from the date thereof at the rate of 12.75% per annum until paid, payable in monthly installments commencing on the first day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On December 21, 2001, to secure the payment of the Note, Mark A. Paulson executed and delivered to Town and Country Credit his Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Hennepin County, Minnesota, legally described as follows:

Lot 1, Block 11, Franklin Nursery's First Addition to Minneapolis

which property has an address of: 6100 12th Ave S, Minneapolis, MN 55417. The mortgage was filed for record in the office of the Recorder, County of Hennepin, on March 6, 2002, as Document No. 7669534, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a modified plan dated August 9, 2004, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the July, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

2 payments @ \$1,135.28	\$2,270.56
2 late charges @ \$45.64	91.28
Attorneys Fees & Costs	<u>800.00</u>
TOTAL POST-PETITION	\$3,161.84

Through Debtors' failure to make current post-petition payments, amounts currently due and owing include the following:

Principal	\$83,254.51
Interest	10,159.31
Escrow Shortage	1,186.70
Accumulated late fees	522.79
Attorneys Fees & Costs	<u>800.00</u>
TOTAL	\$95,923.31

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to

pursue its remedies under State Law.

13. This is an attempt to collect a debt and any information obtained will be used for that purpose. This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Deutsche Bank Trust Company Americas as Custodian moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated:

9-22-01.

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Dan Aentzer, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

9.20.04

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

18

7669534

OFFICE OF COUNTY RECORDER
HENNEPIN COUNTY, MINNESOTA

CERTIFIED FILED AND OR
RECORDED ON

2002 MAR -6 AM 9:16

7669534

AS TO INTEREST

Michael J. Kennedy

CO REC.

[Signature]

DEPUTY

11D

[Space Above This Line For Recording Data]

MORTGAGE

SIGNATURE TITLE
048029

Return To:

Town and Country Credit
2600 Michelson Drive, Suite
300
Irvine, CA 92612

Henn Co MRT
JRG#38266
02/27/2002
Paid \$201.60

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated December 21, 2001 together with all Riders to this document.

0033388729

MINNESOTA Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

UNIFORM - 6(MN) (0005)

Page 1 of 15

Initials *[Signature]*

[Handwritten]

8036764

RECEIVED

MAY 7 2003

MAY -7 AM 8:00

8036764

RECEIVED

MAY -7 AM 8:00

When recorded mail to:
 Town and Country Credit Corp.
 505 City Parkway West Ste 700
 Orange, CA 92368
 03-24901
 Loan Number: 0033388729 - 60143

Book 616

ASSIGNMENT OF MORTGAGE

11450768

KNOW ALL MEN BY THESE PRESENTS That Town and Country Credit Corp.
 A Corporation existing under the laws of the State of Delaware party of the first part, in consideration of
 the sum of TEN DOLLARS (\$10.00) in hand paid by ****

party of the second part, receipt whereof is hereby acknowledged, does hereby sell, assign, transfer and
 set over, to said party of the second part and assigns that certain mortgage executed by

Mark A. Paulson, An Unmarried Man

**** DEUTSCHE BANK TRUST COMPANY AMERICAS FORMERLY KNOWN AS BANKER'S TRUST CO.,
 AS TRUSTEE AND CUSTODIAN BY SAXON MORTGAGE SERVICES, INC. FKA MERITECH
 MORTGAGE SERVICES INC. AS THEIR ATTORNEY IN FACT

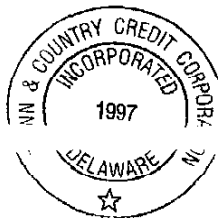
to Town and Country Credit Corp.

filed for record in the Office of the County of HENNEPIN, and the State of Minnesota, on the 5th
 day of March, 2002, and recorded as Document ~~008000~~ 7669534

PROPERTY DESCRIBED AS: "LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART
 HEREOF"

Dated this 03/31/2003.

(Corporate Seal)



Town and Country Credit Corp.

By: Lorin A Costa
 Lorin A Costa - Asst. Secretary

Attest: Teresa Short
 Teresa Short - Asst. Secretary

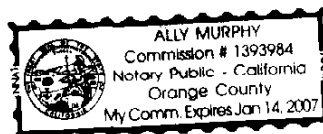
State of California
 County of ORANGE

On 03/31/2003 before me, ALLY MURPHY
 personally appeared Lorin A Costa and Teresa Short

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
 name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the
 same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
 person(s) or the entity upon behalf of which is the person(s) acted, executed the instrument.

WITNESS my hand and official seal

ALLY MURPHY (Seal)
 ALLY MURPHY



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 03-44606-RJK
Chapter 13

Mark Paulson,

Debtor(s)

MEMORANDUM OF LAW

Deutsche Bank Trust Company Americas as Custodian ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$3,161.84.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than one month. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$95,923.31.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: _____

9-22-01

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

By /e/ Nancy A. Nordmeyer
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)

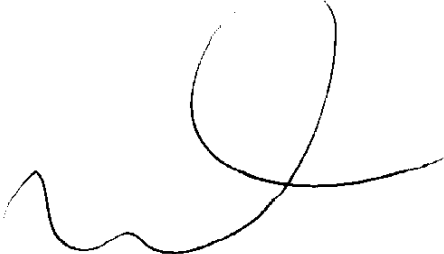
I, **Stephanie Pilegaard** says that on September 22, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Mark Paulson
6100 12th Ave South
Minneapolis, MN 55417

Curtis Walker, Esq.
4356 Nicollet Avenue South
Minneapolis, MN 55409

Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

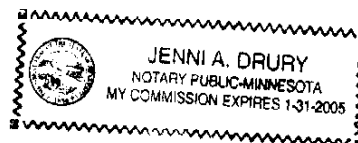
U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415



Stephanie Pilegaard

Subscribed and sworn to before me September 22, 2004.

Notary



03-24901
011450768

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-44606-RJK

Mark Paulson,
Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on October 14, 2004.

THIS CAUSE coming to be heard on the Motion of Deutsche Bank Trust Company Americas as Custodian, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Deutsche Bank Trust Company Americas as Custodian, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lot 1, Block 11, Franklin Nursery's First Addition to
Minneapolis

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court